

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Olga Bentin	Team: Squad #4	CCRB Case #: 201804716	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 06/05/2018 6:44 PM	Location of Incident: Highland Boulevard and Jamaica Avenue	Precinct: 75	18 Mo. SOL 12/5/2019	EO SOL 12/5/2019	
Date/Time CV Reported Wed, 06/06/2018 6:25 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 06/13/2018 11:10 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Vincent Gambino	31824	954841	075 PCT
2. POM Sean Collins	29210	954654	075 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Francesco Iorio	05463	956763	075 PCT
2. POM Teriq Grant	12175	954893	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Vincent Gambino	Force: Police Officer Vincent Gambino used physical force against § 87(2)(b)	
B.POM Vincent Gambino	Abuse: Police Officer Vincent Gambino interfered with § 87(2)(b)'s use of a recording device.	
C.POM Vincent Gambino	Abuse: Police Officer Vincent Gambino searched § 87(2)(b)	
D.POM Vincent Gambino	Abuse: Police Officer Vincent Gambino frisked § 87(2)(b)	
E.POM Sean Collins	Abuse: Police Officer Sean Collins questioned § 87(2)(b)	
F.POM Sean Collins	Abuse: Police Officer Sean Collins searched § 87(2)(b)	
G.POM Sean Collins	Abuse: Police Officer Sean Collins frisked § 87(2)(b)	
H.POM Sean Collins	Abuse: Police Officer Sean Collins searched the vehicle in which § 87(2)(b) was the occupant.	

Case Summary

On June 6, 2018, § 87(2)(b) contacted the IAB Command Center by phone and filed this complaint on her own behalf and on behalf of her boyfriend, § 87(2)(b). On June 13, 2018, this complaint was received at the CCRB. This case was initially assigned to Inv. Jeffrey Mulinelli and re-assigned to Inv. Olga Bentin on December 10, 2018.

On June 5, 2018, at 6:44 p.m., § 87(2)(b) and § 87(2)(b) were pulled over by PO Vincent Gambino and PO Sean Collins, of the 75th Precinct, in the vicinity of Highland Boulevard and Jamaica Avenue in Queens due to a broken rear taillight.

After § 87(2)(b) provided PO Gambino with her driver's license, he asked her to step out of the vehicle. She complied. § 87(2)(b) exited the vehicle with a cellphone in her right hand. PO Gambino asked her to put it away and she did not comply. PO Gambino pushed § 87(2)(b) into the driver's door and handcuffed her (**Allegation A: Force**, § 87(2)(g)). As a result, the cellphone fell to the ground and the video stopped (**Allegation B: Abuse of Authority**, § 87(2)(g)). After § 87(2)(b) was handcuffed, PO Gambino frisked (**Allegation C: Abuse of Authority**, § 87(2)(g)) and searched her (**Allegation D: Abuse of Authority**, § 87(2)(g)).

Simultaneously, PO Collins asked § 87(2)(b) to exit the car and he complied. PO Collins questioned § 87(2)(b) (**Allegation E: Abuse of Authority**, § 87(2)(g)) searched him (**Allegation F: Abuse of Authority**, § 87(2)(g)) and frisked him (**Allegation G: Abuse of Authority**, § 87(2)(g)).

Later, PO Collins searched § 87(2)(b)'s vehicle, including the trunk (**Allegation H, Abuse of Authority**, § 87(2)(g)).

As a result of this incident, § 87(2)(b) and § 87(2)(b) were not arrested, but § 87(2)(b) was issued a summons for inadequate or no stop lamp (BR 03).

§ 87(2)(b) provided the investigation with several short video clips that she and § 87(2)(b) recorded during this incident, which are located in and can be viewed from the Investigative Actions #36-43. The investigation was provided with two BWC recordings of this incident. Full BWC recordings are located in and can be viewed from the Investigative Actions #66 and #67. The relevant video clips are discussed in greater details below.

Findings and Recommendations

Allegation (A) Force: Police Officer Vincent Gambino used physical force against § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Vincent Gambino interfered with § 87(2)(b)'s use of a recording device.

The investigation has established the following facts. On June 5, 2018, at 6:45 p.m., PO Gambino and PO Collins pulled over § 87(2)(b)'s blue 2004 Honda Civic, with the Pennsylvania license plates § 87(2)(b), in the vicinity of Highland Boulevard and Jamaica Avenue in Brooklyn for a broken rear taillight (BR 03). § 87(2)(b) was driving, while her boyfriend, § 87(2)(b) was sitting in the front passenger seat.

PO Gambino approached § 87(2)(b)'s vehicle from the driver side, while PO Collins walked over to the front passenger side. PO Gambino asked § 87(2)(b) for her driver's license and registration, which she provided to him. PO Gambino took the documents and then asked § 87(2)(b) to exit the car. § 87(2)(b) asked PO Gambino why, and he informed her that officers are allowed to remove the occupants from the car. PO Gambino then pulled the door handle and § 87(2)(b) immediately got out of the car.

§ 87(2)(b) (BR 01) stated that she exited the car with her cellphone in her right hand and a video was recording. While exiting the car, PO Gambino pushed her. § 87(2)(b) did not resist physically, but did raise her voice and yelled at PO Gambino. Several seconds later, PO Gambino reached for § 87(2)(b)'s cellphone and simultaneously told her to put it down. He then pulled § 87(2)(b)'s left arm behind her back and began handcuffing her. While holding § 87(2)(b)'s left arm, PO Gambino placed his right hand on her back and shoved § 87(2)(b) into the driver's door. As a result, the cellphone fell to the ground and the video recording stopped. § 87(2)(b) sustained bruising to her wrists (BR 04) from being handcuffed. She did not allege any injury from being pushed by PO Gambino. § 87(2)(b) did not sign HIPAA forms, thus no medical records were requested.

§ 87(2)(b) (BR 02) provided a generally consist statement with that of § 87(2)(b)'s regarding the initial car stop and § 87(2)(b)'s interaction with PO Gambino, with the following exceptions. § 87(2)(b) stated that after § 87(2)(b) exited the car, PO Gambino asked her to turn her cellphone off several times. § 87(2)(b) refused. PO Gambino then became angry, and grabbed § 87(2)(b) "viciously," by grabbing § 87(2)(b)'s arms, shoulders, legs, and chest. § 87(2)(b) believed that PO Gambino may have grabbed § 87(2)(b)'s cellphone and placed it on top of the car.

Video [2019-01-10_13-15-01] (BR 25) and Video [2019-01-10_13-16-32] (BR 26) – which were provided to the investigation by § 87(2)(b) – capture § 87(2)(b) standing outside her car by the front driver side. She is facing the camera. PO Gambino is standing behind her. PO Gambino asks § 87(2)(b) to put her cellphone and keys down. She does not comply and tells PO Gambino that she allowed the officers to search her car.

At the 00:35 minute mark [2019-01-10_13-15-01] (BR 25), § 87(2)(b) says to PO Gambino, "You are snatching my phone." The video does not capture PO Gambino reaching for § 87(2)(b)'s cellphone. The video ends abruptly.

In video [2019-01-10_13-16-32] (BR26), at the 00:02 minute mark, § 87(2)(b) says, "I am getting arrested. He is arresting me." Meanwhile, PO Gambino handcuffs § 87(2)(b)'s left hand. § 87(2)(b) is holding the cellphone in her right hand. The phone shakes and the video captures the steering wheel of § 87(2)(b)'s car. The video then ends abruptly.

PO Gambino's BWC recording [case file #201804716 § 87(2)(b)] (BR 05) shows PO Gambino standing by the front driver side of § 87(2)(b)'s car. PO Gambino and § 87(2)(b) discuss her privilege to drive in New York State and whether she has a valid driver's license. § 87(2)(b) then asks PO Gambino to explain why she is being pulled over and PO Gambino informs her that she was stopped for a broken rear taillight. At the 01:03 minute mark, § 87(2)(b) provides her car's registration and temporary driver's license to PO Gambino. At the 01:28 minute mark, PO Gambino says to § 87(2)(b) "Alright ma'am, just step out for a second." § 87(2)(b) asks PO Gambino to explain why she must step out, to which PO Gambino replies, "Because we're allowed to ask, ma'am." At the 01:40 minute mark, § 87(2)(b) picks up her cellphone from the cup holder, and PO Gambino says, "You can record. We're recording as well. You can see the camera." § 87(2)(b) continuously asks PO Gambino why she must exit the car. At the 01:55 minute mark, PO Gambino says to § 87(2)(b) "Any car stop, we are allowed to remove passengers from the vehicle." § 87(2)(b) turns to PO Gambino and says, "Are you guys being serious now. What am I being stopped for?" PO Gambino informs § 87(2)(b) again of the broken taillight and that she does not have a license. At the 02:21 minute mark, PO Gambino says, "Step out of the vehicle," and he opens the driver side door. At the 02:32 minute mark, § 87(2)(b) exits the vehicle while holding the cellphone in her right hand. PO Gambino asks § 87(2)(b)

§ 87(2)(b) to put her phone down, but she refuses. She then turns away from PO Gambino and says, “Why are you grabbing my phone?” PO Gambino asks § 87(2)(b) again to put her cellphone down. The video does not capture PO Gambino reaching for § 87(2)(b)’s cellphone. At the 02:51 minute mark, PO Gambino says to § 87(2)(b) “Ma’am, I am going to grab the phone out of your hand.” § 87(2)(b) replies, “You are going to grab the phone out of my hand, really?” PO Gambino then asks § 87(2)(b) to put her keys down. At the 02:57 minute mark, § 87(2)(b) raises her voice and says, “We do not have anything. You are stopping me for what?” as she turns toward PO Gambino. PO Gambino again asks § 87(2)(b) to put her cellphone down. At the 03:01 minute mark, § 87(2)(b) interrupts PO Gambino and says, “I let you guys search my vehicle. I got out. I am letting you search my vehicle. What is the problem?” as she moves her hands in front of the chest. At the 03:09 minute mark, PO Gambino again asks § 87(2)(b) several times to put her cellphone and keys down. § 87(2)(b) does not comply and says, “This is crazy.” At the 03:26 minute mark, PO Gambino grabs § 87(2)(b)’s left arm, places it behind her back, and handcuffs it. § 87(2)(b) says, “He is arresting me. There is no probable cause. What are you arresting me for?” It appears that PO Gambino gets a hold of § 87(2)(b)’s right hand and handcuffs it as well. Afterwards, § 87(2)(b) is walked to the rear of her car.

PO Gambino’s BWC does not capture PO Gambino grabbing the cellphone from § 87(2)(b) nor does it capture what happens to the cellphone as § 87(2)(b) is being handcuffed or immediately afterwards.

PO Gambino (BR 06) provided a generally consistent testimony with that of his BWC recording and added the following. § 87(2)(b) was highly irate, which PO Gambino determined based on her raised tone of voice and flailing of her arms, when speaking to him. When § 87(2)(b) exited the car, she continued to be irate. She had a cellphone in her hand and car keys in her other hand. PO Gambino told § 87(2)(b) that she did not need to have anything in her hands, and that he was recording their encounter as well. PO Gambino then asked § 87(2)(b) to put her keys and cellphone down. Given her irate behavior, PO Gambino believed that § 87(2)(b) could use the items as weapons against him. PO Gambino asked § 87(2)(b) to remove the objects from her hands for his, hers, and the other officers’ safety. After multiple requests to put the objects away, PO Gambino decided to handcuff § 87(2)(b) because she was not following his orders and because it was safer for everybody. PO Gambino spun § 87(2)(b) around and pulled her hands behind her back. § 87(2)(b) tensed her arms, preventing PO Gambino from handcuffing her. PO Gambino overcame this resistance by using his strength to overpower § 87(2)(b) as he pulled her arms behind her back. PO Gambino denied pushing § 87(2)(b) against the car, or the car door, or using any other force against § 87(2)(b) to overcome her resistance.

PO Collins (BR 07) provided a generally consistent testimony with that of PO Gambino with the following exceptions and additional information. PO Collins stated that he might have asked § 87(2)(b) to put her cellphone away, because the officers were recording the incident. PO Collins did not see if § 87(2)(b) had the cellphone in her hand when she exited the car, as he was dealing with § 87(2)(b). PO Gambino handcuffed § 87(2)(b) for his and the other officers’ safety, because she was irate. He did not see how PO Gambino handcuffed § 87(2)(b) but denied that PO Gambino pushed her against the car or the car door.

Officers who conduct routine traffic stops may exercise their discretion to require occupants to exit a vehicle once a lawful stop has been effected, out of concern for safety and without particularized suspicion. *People v. Isaac*, 107 A.D. 3d 1055 (2013) (BR 08) An officer may apply no more than the reasonable force necessary to gain control of a subject or to effect an arrest. Patrol Guide Procedure 221-01 (BR 09) Individuals have a right to lawfully observe and/or

record police activity including but not limited to detentions, searches, arrests, or uses of force. This right to observe and/or record police action can be limited for reasons such as the safety of officers or other members of the public, or when a violation of law is committed by the individual who is observing/videotaping. NYPD Patrol Guide 203-29 (BR 10)

§ 87(2)(g)

Allegation (C) Abuse of Authority: Police Officer Vincent Gambino frisked § 87(2)(b)

Allegation (D) Abuse of Authority: Police Officer Vincent Gambino searched § 87(2)(b)

The investigation has determined that PO Gambino did not frisk or search § 87(2)(b) during this incident.

§ 87(2)(b) (BR 01) stated that she was wearing blue cotton shorts with a drawstring, a pink spaghetti-strap tank top, and flip-flops. She did not have anything on her person that could have created a bulge. § 87(2)(b) alleged that after PO Gambino placed her in handcuffs, he immediately patted her legs and placed his hands under the straps of her tank top, but did not pat down over her shirt. PO Gambino then placed his hands in § 87(2)(b)'s pockets, removed her keys, and placed them in her car. PO Gambino then walked § 87(2)(b) to the rear of her car.

§ 87(2)(b) (BR 02) stated that § 87(2)(b) wore tight shorts that had no pockets. He did not allege that § 87(2)(b) was frisked or searched, but did say that after § 87(2)(b) was handcuffed, PO Gambino and PO Collins “improperly searched” § 87(2)(b) by touching and grabbing her thighs.

PO Gambino's BWC recording [case file #201804716 § 87(2)(b) (BR 05) shows that § 87(2)(b) is wearing dark-colored sweatpants and a blue and white “Champion” t-shirt. The video does not capture PO Gambino frisking or searching § 87(2)(b) immediately after she exits the car (at the 02:37 minute mark) or after placing her in handcuffs (at the 04:08 minute mark).

PO Gambino (BR 06) acknowledged that he placed § 87(2)(b) in handcuffs after she exited the vehicle, but denied frisking or searching her during the incident, and denied seeing any officer doing so.

PO Collins (BR 07) corroborated PO Gambino's account and denied that any officer frisked or searched § 87(2)(b) during this incident.

§ 87(2)(g)

Allegation (E) Abuse of Authority: Police Officer Sean Collins questioned § 87(2)(b)

Allegation (F) Abuse of Authority: Police Officer Sean Collins searched § 87(2)(b)

Allegation (G) Abuse of Authority: Police Officer Sean Collins frisked § 87(2)(b)

It is undisputed that PO Collins questioned, frisked, and searched § 87(2)(b) (BR 02) stated that at the time of the car stop, he was sitting in the front passenger seat with his right hand under his right thigh, while resting his left arm on the center console. § 87(2)(b) commonly sits with his right hand under his thigh. § 87(2)(b) had nothing in either of his hands when PO Gambino and PO Collins approached the vehicle. § 87(2)(b) wore a tight-fit blue hooded sweatshirt and sweatpants. The sweatshirt had waist-height front pockets, and the sweatpants had front pockets as well. § 87(2)(b) had his identification, EBT card, a barbershop card, and business cards loose in one of the pants pockets.

When PO Collins approached the front passenger side of the vehicle, he asked § 87(2)(b) why he was hiding his right hand and why he was nervous. § 87(2)(b) told PO Collins that he was not hiding anything and that the officers would be able to see if he was fidgeting, because the car's windows were not tinted. PO Collins told § 87(2)(b) that he was making him nervous, but did not ask § 87(2)(b) to remove his hand from under his leg. § 87(2)(b) also did not remove his hand from underneath his leg. PO Collins then asked § 87(2)(b) if he had anything, such as a gun, in the car that could hurt him. Several seconds later, PO Collins asked § 87(2)(b) to exit the car, and § 87(2)(b) complied. As soon as § 87(2)(b) exited the car, PO Collins immediately placed his hands in § 87(2)(b)'s hoodie pockets, and removed his identification and several other cards. PO Collins then patted over § 87(2)(b)'s thighs and ran his hands up and down § 87(2)(b)'s legs.

§ 87(2)(b) (BR 01) did not make any statements about PO Collins asking § 87(2)(b) if he had a gun in the car. She did not see § 87(2)(b) being frisked or searched, but assumed that it must have happened, because PO Collins obtained § 87(2)(b)'s identification.

PO Collins' BWC recording [case file #201804716 § 87(2)(b)] (BR 11) shows PO Collins walk over to the front passenger side of § 87(2)(b)'s car. § 87(2)(b) is sitting in the front passenger seat with his left hand resting on his left leg. The camera angle does not capture where § 87(2)(b)'s right hand is, but his right thigh is visible. Between 00:17 and 00:33 minutes, PO Collins asks § 87(2)(b) "So, do you have anything in your other hand?" § 87(2)(b) replies, "No, I have nothing." PO Collins asks again, "There is nothing underneath you?" § 87(2)(b) replies something, but it is inaudible. PO Collins says, "Sure? Why don't you just move your leg?" § 87(2)(b) is not moving. He replies something to PO Collins, but it is inaudible. PO Collins then says to § 87(2)(b) "Why not? It is just weird that your hand is under your leg like that." PO § 87(2)(b) then asks § 87(2)(b) to move his leg. Meanwhile, PO Collins says to § 87(2)(b) "I do not know what is under your leg. That's all I'm asking." At the 02:48 minute mark, § 87(2)(b) exits the car and PO Collins asks him, "Sir, do you have anything on you?" § 87(2)(b) replies, "No, I have nothing." PO Collins then asks § 87(2)(b) to place both hands on the car's roof and says, "I do not know why you are so tense." The camera does not capture what happens next, as PO Collins moves too close to § 87(2)(b) from behind, covering the camera's view. At the 03:02 minute mark, § 87(2)(b) removes his hands from the car's roof, turns in the direction of PO Collins, and says, "What you are checking me for?" PO Collins replies, "What do you mean? I am pulling you out of the car. I am just making sure you do not have any weapons on you. Do you have anything on you that should not be? You seem very nervous." § 87(2)(b) replies, "No," and then says, "Do you mean drugs or anything?" PO Collins does not reply. At the 03:42 minute mark, PO Collins places a stack of cards on top of the car's roof. It is unclear where PO Collins retrieved the cards from. PO Collins then pats down § 87(2)(b)'s legs. Afterwards, PO Collins asks § 87(2)(b) to step to the rear of the car.

PO Gambino's BWC recording [case file #201804716 § 87(2)(b)] (BR 05) shows § 87(2)(b) exit the car. At the 02:48 minute mark, § 87(2)(b) exits the car, faces the car and places his hands on the car's roof. PO Collins stands behind § 87(2)(b) PO Collins places both of his hands in the pockets of § 87(2)(b)'s sweatshirt. PO Gambino moves to the side, and PO Collins and § 87(2)(b) disappear from the camera's view.

PO Collins (BR 07) provided a generally consistent testimony with what is captured on his BWC recording, with the following exceptions and additional information. PO Collins stated that when he approached the car, he noticed that § 87(2)(b) had his right hand under his leg, which appeared as if he was trying to conceal something. However, PO Collins could not see what, if anything, was being concealed. § 87(2)(b) was tense and nervous. PO Collins asked § 87(2)(b) to move his leg so he could see his right hand and then said, "Do you have anything?" § 87(2)(b) did not look at PO Collins, but quietly stared straight ahead. PO Collins denied asking § 87(2)(b) if he had a gun in the car. While PO Collins spoke to § 87(2)(b) interjected and was irate. § 87(2)(b)'s behavior was "very weird" and that, coupled with § 87(2)(b) acting irate, made PO Collins feel that § 87(2)(b) was possibly helping § 87(2)(b) conceal "whatever he had," and this raised PO Collins' suspicion "a little bit." However, PO Collins could not point out specifically what he suspected § 87(2)(b) was concealing and said, "It could have been anything. It could have been a knife, a gun, a joint. The car smelled like marijuana. Who knows. Maybe he § 87(2)(b) just lighted it and put it out. It could have been anything." When asked whether § 87(2)(b)'s actions made him fear for his safety, PO Collins replied, "It raised my awareness, you know. I just wanted to know what he had in his hand."

PO Collins did not initially recall frisking or searching § 87(2)(b) However, after reviewing his BWC recording, PO Collins acknowledged frisking § 87(2)(b)'s outer clothing, waist area, legs, and then searching his pants and hoodie pockets. PO Collins found no weapon on § 87(2)(b)'s person. PO Collins did not remember if he observed any bulges on § 87(2)(b)'s clothing when § 87(2)(b) exited the car. PO Collins frisked § 87(2)(b) "because of that hand," and added, "It looked like he was concealing something. I do not know. Maybe he stuck something in his waist or something that I was unable to see before I even approached the car, or something like that." PO Collins explained that he entered § 87(2)(b)'s hoodie or possibly his pants pockets because "either he had something hard in his pockets, or the fact that it slightly smelled like marijuana, and we thought that he might possibly had a joint, a gun, or a knife on him."

PO Gambino (BR 06) did not observe PO Collins frisk or search § 87(2)(b) and he did not hear PO Gambino ask § 87(2)(b) if he had a gun in the car.

An officer may ask pointed questions when he has a founded suspicion that criminality is afoot. An officer may frisk an individual if he has reasonable suspicion that the person is armed and dangerous. An officer must have probable cause to search an individual. People v. DeBour 40 N.Y. 2d 210 (1976) (BR 12) Behavior which alone is susceptible of innocent as well as guilty interpretation will not generate a founded or reasonable suspicion that criminality is afoot. People v. Barreto, 161 A.D. 2d 305 (1st Dept. 1990) (BR 14). The smell of marijuana smoke, with nothing more, can be sufficient to provide police officers with probable cause to search an automobile and its occupants. People v. Chestnut, 43 A.D.2d 260 (App. Div. 1974) (BR 15)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (H): Abuse of Authority: Police Officer Sean Collins searched the vehicle in which § 87(2)(b) was the occupant.

It is undisputed that PO Collins entered and searched § 87(2)(b)'s car vehicle, including the trunk.

§ 87(2)(b) (BR 01) stated that she allowed the officers to search her car and that she expressed her consent by exiting the vehicle, but she did not give explicit verbal consent. § 87(2)(b) felt "enticed" by the officers and allowed them to search her car out of fear after PO Gambino pulled the door handle. PO Collins searched the front passenger and driver side of the car, and opened and looked inside of the glove compartment, the center console, and under the seats. After searching the interior of the car, PO Collins asked § 87(2)(b) if he could search the trunk of the car. § 87(2)(b) said, "Go ahead," given that the rest of the car had already been searched and believing that the officers were going to search it anyway. PO Collins then opened and searched the trunk of the car. § 87(2)(b)'s trunk contained clothing, jumper cables, a portable car battery charger, some motor oil, and a spare tire. No weapon or contraband was discovered.

§ 87(2)(b) (BR 02) provided a generally consistent account with that of § 87(2)(b) and added that PO Collins searched the car twice during this incident.

§ 87(2)(b) and § 87(2)(b) both denied consuming marijuana on the day of the incident. At the 02:21 minute mark of PO Gambino's BWC recording [case file #201804716 § 87(2)(b) (BR 05), § 87(2)(b) says to PO Gambino, "So, if I step out of the vehicle,

you are going to search my car illegally.” PO Gambino immediately replies, “Search lunge-able, grabbable area, yes.” § 87(2)(b) interrupts PO Gambino and says, “Illegally, right?” PO Gambino replies, “Not illegally. Lunge-able and grabble area. We are allowed to search lunge-able and grabbable area. Step out of the vehicle,” as he opens the driver side door. At the 02:32 minute mark, § 87(2)(b) exits the car. PO Gambino asks § 87(2)(b) to put her phone down, but she refuses. § 87(2)(b) says to PO Gambino, “We do not have anything. You are stopping me for what?” PO Gambino asks § 87(2)(b) why she is acting that way. At the 03:01 minute mark, § 87(2)(b) replies, “I let you guys search my vehicle. I got out. I am letting you search my vehicle. What is the problem? I let you search my vehicle, sir.”

PO Collins’ BWC recording [case file #201804716 (car search 1)] (BR 16) begins with PO Collins reaching into the lower pocket of the front passenger's door. At the 00:26 minute mark, he is heard opening what is believed to be the glove compartment, though the glove compartment is to his right and cannot be seen, and transfers papers, a CD case, and an eyeglasses case into his left hand. He puts the items back within seconds. At the 00:38 mark, PO Collins opens and briefly searches the center console armrest. He then appears to look under the front passenger's seat with his flashlight. He then shuts the front passenger door and moves to the driver's side. At the 01:11 minute mark, PO Collins opens the driver's door. He searches the lower door pocket and under the driver's seat with his flashlight. He returns to the passenger side at the 01:34 minute mark, opens the door, and moves the front passenger's seat forward. He searches the floor behind the front passenger's seat and opens a black grocery bag which was tied shut and contained an empty Gatorade bottle and other garbage. PO Collins moves what appears to be clothing on the rear seat before returning the front seat to its normal position and exiting the car. He then moves to the rear of the vehicle and speaks with § 87(2)(b) stating that she was handcuffed because she refused to follow directions.

PO Collins’ BWC recording [case file #201804716 (car search 2)] (BR 17) begins with PO Collins returning to the passenger's door. At the 00:05 minute mark, using his flashlight and hands, he searches the passenger's side lower door pocket, under the passenger's seat, the center console cupholders, between the driver's seat and the center console, and the glove compartment. Due to the camera's angle, it is unclear whether he searches between the front passenger's seat and the center console. He exits the vehicle at the 01:03 minute mark and says, “Nah.”

At the 00:12 minute mark, of PO Collins’ BWC recording [case file #201804716 (trunk search)] (BR 18), PO Collins says, “Yo, anything in the trunk?” It is unclear whether either § 87(2)(b) or § 87(2)(b) respond. PO Collins then asks § 87(2)(b) “So you don't mind if we look, right?” § 87(2)(b) replies, “Nope, I don't.” § 87(2)(b) then instructs PO Collins to open the trunk from inside the car. At the 00:26 minute mark, PO Collins enters the car through the driver's door and pulls the latch, opening the trunk. At the 00:35 minute mark, PO Collins searches the trunk of the car and bags inside of it. He also lifts the floor of the trunk, exposing the spare tire.

PO Collins (BR 07) acknowledged searching § 87(2)(b)'s car and its trunk as captured in the BWC recordings. PO Collins explained that he searched the car because § 87(2)(b) gave them permission to do so by saying, “Go ahead. Search the car. There is nothing in there.” PO Collins did not remember who asked § 87(2)(b) for permission to search her car, but acknowledged asking for permission to search the trunk. PO Collins stated that they suspected there might have been something in the car based on the way § 87(2)(b) and § 87(2)(b) were acting. PO Collins explained that, during any violation, officers are allowed to remove occupants from the car to search the car. PO Collins added that § 87(2)(b)'s “permission was just extra.”

After searching the car, PO Collins returned to § 87(2)(b) and asked if he could search the trunk. § 87(2)(b) replied, “Go ahead.” Because PO Collins did not find anything in the car upon the initial search, he believed that § 87(2)(b) and § 87(2)(b) had something in the trunk, but he could not specify what exactly he suspected was in the trunk. PO Collins explained, “It could have been anything. It could have been a knife, or a gun, or a joint. The car smelled like marijuana...Just the way they were acting, maybe contraband. Maybe something illegal.” After searching the trunk, PO Collins returned and performed warrant checks for § 87(2)(b) and § 87(2)(b) via his department issued cellphone. PO Collins learned that § 87(2)(b) had been arrested in 2017 for gun possession and that he was on probation. Because of this information, PO Collins returned to § 87(2)(b)'s car and searched it again to make sure that he did not miss anything. Aside from § 87(2)(b)'s arrest record, there was no other reason for which PO Collins decided to search § 87(2)(b)'s car a second time.

PO Gambino (BR 06) stated that § 87(2)(b) consented to the search of her car. At some point during the incident, § 87(2)(b) stated something to the effect of, “I know you want to search the trunk. Go ahead.” Prior to § 87(2)(b) consenting to the search, there was nothing which suggested to him that there was contraband in the car aside from her irate behavior. Initially, PO Gambino did not remember if § 87(2)(b) asked him whether he was going to search her car if she exited or that he replied to her, “Search the lunge-able, grabbable area, yes.” After reviewing his BWC recording, he acknowledged having the above conversation with § 87(2)(b). PO Gambino said that he intended to convey that if the officers were to search the car, they would be searching the lunge-able and grabbable areas. PO Gambino interpreted § 87(2)(b)'s statements, “I let you search my vehicle. I got out. I am letting you search my vehicle. What is the problem?” as consent to search the car.

Consent is voluntary when it is “true act of will, an unequivocal product of an essentially free and unconstrained choice.” People v. Gonzalez, 39 N.Y.2d 122 (1976) (BR 19) The observation of “furtive movements” by occupants of a vehicle, in and of itself, will not justify a vehicular search. While those movements alone would not justify an officer’s intrusion into the vehicle, the presence of additional factors can justify an officer’s reasonable suspicion that there could be a weapon in the vehicle that posed “actual and specific danger.” People v. Newman, 96 A.D. 3d 34 (N.Y. App. Div. 1st Dep’t Apr. 17, 2012) (BR 20)

§ 87(2)(g)

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§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 27).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 28).
- PO Vincent Gambino has been a member-of-service for five years and has been a subject in one CCRB complaint and one allegation that was closed as complaint uncooperative.

§ 87(2)(g)

- PO Sean Collins has been a member-of-service for five years and has been a subject in five CCRB complaints and seven allegations, none of which were closed as substantiated.

§ 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- § 87(2)(b) filed a Personal Injury Claim for one million dollars (\$1,000,000.00) claiming incarceration for approximately 50 minutes, loss of liberty, emotional distress, humiliation, embarrassment, invasion of privacy, physical injury, pain and suffering (BR 22).

- § 87(2)(b); §§ 86(1)(3)(4); § 87(2)(c)

- § 87(2)(b); §§ 86(1)(3)(4); § 87(2)(c)

Squad No.: 4

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer:

Signature

Print Title & Name

Date